INDEPENDENT COMMUNITY BANKERS of AMERICA®

October 1, 2010

Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
CH04002
Basel, Switzerland

Re: Basel Committee's Proposal to Ensure the Loss Absorbency of Regulatory Capital at the Point of Non-Viability

Dear Secretariat of the Basel Committee on Banking Supervision:

The Independent Community Bankers of America[1] (ICBA) welcomes the opportunity to comment on the Basel Committee on Banking Supervision (the "Basel Committee") Consultative Document entitled "Proposal to Ensure the Loss Absorbency of Regulatory Capital at the Point of Non-Viability." The Basel Committee wants to ensure that all regulatory capital instruments issued by banks are capable of absorbing losses in the event that a bank is unable to support itself in the private market and there is intervention by the public sector.

During the recent financial crisis, a number of distressed banks were rescued by the public sector. These rescues, which usually took the form of capital equity injections, had the effect of supporting not only depositors but also the investors in regulatory capital instruments. Tier 2 capital instruments such as subordinated debt and in some cases non-common Tier 1 instruments did not absorb losses incurred by certain large internationally-active banks that would have failed had the public sector not intervened.

In order for these instruments to be treated as regulatory capital, the Basel Committee is considering that as a precondition, that such instruments be capable of bearing a loss. The Basel Committee is therefore considering requiring that all regulatory capital

[1] The Independent Community Bankers of America represents nearly 5,000 community banks of all sizes and charter types throughout the United States and is dedicated exclusively to representing the interests of the community banking industry and the communities and customers we serve. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever changing marketplace.

With nearly 5,000 members, representing more than 20,000 locations nationwide and employing nearly 300,000 Americans, ICBA members hold $1 trillion in assets, $800 billion in deposits, and $700 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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instruments include a mechanism in their terms and conditions that ensure they will take a loss at the point of non-viability of the bank.

ICBA's Position

ICBA agrees strongly with the Basel Committee's proposal that all non-common Tier 1 instruments at internationally active banks have a clause in their terms and conditions that requires them to be "written-off" or converted to equity on the occurrence of a trigger event. We agree that the trigger event should be the time when a decision has been made to inject public sector capital and that without the injection of public capital, the bank would be become non-viable. "Written off" would mean that the instrument holder would not have any residual claim that is senior to the common equity injected.

Under the proposal, banks would also be allowed to immediately "convert" or issue common stock on the trigger event as compensation to the instrument holder. However, this issuance of common stock would still be considered a "write-off "of the capital instruments since the capital instrument holders would no longer remain senior to any common equity injected by the public sector. The issuance of the new shares would simply affect the ownership structure of the bank after the trigger event.

ICBA agrees that the proposal would ensure that the non-common capital instruments of a systemically important bank are capable of taking a loss. This will make non-common capital instruments more expensive at banks that are, or are perceived to be, subject to a public sector guarantee. Investors in these instruments will charge higher coupon rates in response to being exposed to losses if the bank becomes non-viable. With respect to raising capital, this will serve to level the playing field between small and large banks.

We also agree that this should eventually impose additional market discipline on the larger, systemically important banks. Investors in capital instruments will need to monitor the risks taken by the issuing bank and if the bank takes more risk, and the risk of loss to investor increases, buyers of these instruments will demand a higher coupon.

However, we disagree with the Basel Committee on one issue. The proposal calls for all capital instruments issued by all banks subject to the Basel Capital regime to include a conversion/write-off term. **ICBA sees no reason to apply this proposal to all banks. It will require U.S. community banks for instance, to include such a term or provision in the documentation for any subordinated debt that is issued by the bank, needlessly complicating the legal provisions of these instruments.**

Instead, the proposal should be limited to only the largest financial institutions that potentially could be considered systemically important. In the United States, for instance, the proposal should apply only to those banks with consolidated assets exceeding $50 billion. While it is true that if the proposal was adopted, only those that are benefitting from market expectations of a public sector bailout would be adversely impacted, it still will be a burden on community banks to include such a

conversion/write-off provision in the documentation for all their regulatory capital instruments.

Conclusion

ICBA supports the Basel Committee's proposal that all non-common Tier 1 instruments at internationally active banks include a provision in their terms and conditions that require them to be written-off on the occurrence of a trigger event such as when a decision is make to inject public sector capital into the bank. However, the proposal should be limited to only the largest financial institutions that potentially could be considered systemically important. Requiring all banks to comply would be a regulatory burden for smaller banks and needlessly complicate the terms and conditions of their regulatory capital instruments.

ICBA appreciates the opportunity to comment on the Basel Committee's Consultative Document entitled "Proposal to Ensure the Loss Absorbency of Regulatory Capital at the Point of Non-Viability." If you have any questions about our letter, please do not hesitate to contact me at 202-659-8111 or Chris.Cole@icba.org.

Sincerely,
/s/ Christopher Cole

Christopher Cole
Senior Vice President and Senior Regulatory Counsel